

SERVED: September 24, 1996

NTSB Order No. EA-4485

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 18th day of September, 1996

| | | |
|----------------------------------|---|-----------------|
| _____ |) | |
| DAVID R. HINSON, |) | |
| Administrator, |) | |
| Federal Aviation Administration, |) | |
| |) | |
| Complainant, |) | |
| |) | Docket SE-13796 |
| v. |) | |
| |) | |
| STEPHEN T. SMITH, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

ORDER DISMISSING APPEAL

1 The Administrator has moved to dismiss respondent's appeal
2 in this proceeding because the notice of appeal was not filed, as
3 required by Section 821.47 of the Board's Rules of Practice,
4 within 10 days¹ after the law judge's decision was served on

¹Section 821.47 provides as follows:

' 821.47 Notice of appeal.

A party may appeal from a law judge's order or from the initial decision by filing with the Board and serving upon the other parties (pursuant to ' 821.8) a notice of appeal within 10 days after an oral initial decision has been rendered or a written decision or an order has been served.

1 April 17, 1996.² We will grant the motion, to which the
2 respondent has filed an answer in opposition.
3

4 Because the deadline for filing respondent's notice of
5 appeal fell on a Saturday, it had to be submitted no later than
6 April 29. See 49 C.F.R. 821.10. Respondent's undated notice of
7 appeal was postmarked April 30. While respondent points out that
8 outgoing prison mail is sometimes delayed for inspection, he does
9 not contend that that in fact occurred here or that he tendered
10 the notice of appeal to prison authorities for postal pickup
11 earlier than the 30th.³ The reason respondent did not act more
12 promptly, he essentially admits, is that he incorrectly assumed
13 that the 10-day filing period ran from the date he received the
14 law judge's decision, instead of the date the law judge served
15 it, as the rule provides.⁴
16

17 Unfounded mistakes as to procedural requirements do not, the
18 Board has held, justify the acceptance of untimely notices of
19 appeal. See, e.g., Administrator v. Near, 5 NTSB 994 (1986).
20 Respondent's appeal, therefore, must be dismissed for want of
21
22
23
24
25
26
27
28
29
30

²The law judge's order grants the Administrator's motion for summary judgment on a complaint alleging that respondent's private pilot certificate should be revoked, pursuant to section 61.15 of the Federal Aviation Regulations, for his federal court criminal convictions involving unlawful drug activity. Respondent is currently serving a 10-year sentence imposed by the federal district court in Arizona for those convictions in 1992.

³Respondent did, however, submit a statement from a prison official indicating that the respondent signed for the notice of appeal, which had been sent to him by certified mail, on April 26. The statement does not indicate how much sooner, if at all, respondent could have claimed it.

⁴The appeal rights attached to the law judge's decision also noted that a written notice of appeal would be due within 10 days "after the date on which [the order] has been served." The service date of the order is prominently noted at the top of the first page of the order.

1 good cause to excuse the late notice.⁵ See Administrator v.
2 Hooper, 6 NTSB 559 (1988).

3
4 **ACCORDINGLY, IT IS ORDERED THAT:**

5
6 1. The Administrator's motion to dismiss respondent's
7 appeal is granted; and

8
9 2. Respondent's untimely appeal is dismissed.

10
11
12
13 HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA,
14 and BLACK, Members of the Board, concurred in the above order.
15

⁵Although we have determined that respondent's notice of appeal must be dismissed on this procedural ground, we note that the three-page brief in support of his appeal does not advance any objections concerning the validity of the law judge's ruling that could serve as a basis for reversing it. Rather, respondent's appeal amounts to a plea for leniency as to sanction, based on, among other factors that do not bear on the appropriateness of revocation for the specific drug-related offenses for which respondent was convicted, the assertion that the consequences of his criminal convictions have been punishment enough. Such considerations, however relevant they may be to the Administrator's decision to allow an airman to be re-certificated after a revocation, do not undermine the judgment that revocation was warranted for the section 61.15 charge set forth in the Administrator's complaint.